

**THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

UNITED STATES OF AMERICA, <u>ex rel.</u>)	
Cori Rigsby, et al.,)	
)	
Plaintiff,)	Civil No. 1:06cv433LTS-RHW
)	
v.)	
)	
STATE FARM INS. CO., et al.)	
)	
Defendants.)	
)	

**UNITED STATES' MEMORANDUM IN SUPPORT OF MOTION FOR
RECONSIDERATION OF ORDER DISMISSING
DEFENDANT FORENSIC ANALYSIS AND ENGINEERING CORP.**

The United States respectfully requests that this Court reconsider its order of July 29, 2010 granting the motion to dismiss filed by defendant Forensic Analysis and Engineering Corp. (FAEC). The United States requests that this Court vacate that order and deny FAEC's motion to dismiss, without prejudice, because the Government has not approved FAEC's proposed settlement and cannot do so in its current form.

The False Claims Act (FCA) expressly provides (in pertinent part) that a *qui tam* suit "may be dismissed only if ... the Attorney General give[s] written consent to the dismissal." 31 U.S.C. § 3730(b)(1). The mere absence of an express objection by the Attorney General is not sufficient to permit dismissal, even where a relator and a defendant otherwise agree.

Reconsidering dismissal and denying FAEC's motion without prejudice will permit the Government to discuss and restructure certain problematic aspects of the proposed settlement with the parties, in a way that will be acceptable to the Government and potentially more advantageous to the parties. The Government is prepared to enter promptly into such discussions

with the parties and will report back to the Court promptly. In its proposed order, the Government suggests that the parties report back to the Court within 21 days.

The Relators provided the United States with a copy of the proposed settlement shortly after it was executed by the parties on May 28, 2010. The Government has been reviewing the settlement agreement since then. However, this has involved review by multiple government offices, because Hurricane Katrina and its aftermath have been a matter of cross-departmental interest and investigation. That review has been completed, and the Government is not in a position to approve the settlement in its current form, but it is prepared to discuss its concerns.

The Government regrets that it did not have its opposition to FAEC's motion to dismiss on file before the Court's July 29 Order. The United States respectfully notes, however, that at the time the Court issued its July 29 Order, the Government's time to submit a brief in opposition to FAEC's motion to dismiss had not yet expired. *See* Local Rule 7(b)(4) and FRCP, Rule 6 (d). Also, while Relator had presented the proposed settlement to the United States shortly after it was executed, the Government was not notified by any party of FAEC's intention to file its motion to dismiss at the particular time that it did. The motion was filed at a time when assigned Government counsel within Main Justice was away on leave and, candidly, dealing with a family emergency, so the Government's ability to respond has been slowed.

Accordingly, the Government requests that this Court, upon reconsideration, vacate its July 29 Order and deny FAEC's motion to dismiss without prejudice.

Respectfully submitted,

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DON BURKHALTER
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Southern District of Mississippi

Dated: August 9, 2010

/s/ Felicia C. Adams
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum in Support has been sent via CM-ECF electronic service, to all parties, on August 9, 2010.

/s/ Felicia C. Adams
FELICIA C. ADAMS